



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0302]

Hours of Service of Drivers: Transco, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Transco, Inc.'s (Transco) request for exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption will enable Transco's drivers to comply with the 30-minute break requirement while performing on-duty not-driving tasks. The exemption applies to all Transco drivers in its grocery division who make wholesale deliveries to grocery and convenience stores.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS FROM PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: hoursofservice@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2018-0302” in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket in person, by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application

and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Transco seeks an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Specifically, Transco requests an exemption that would allow the grocery division drivers to take a 30-minute on-duty, non-driving break in place of the 30-minute off-duty rest break currently required. McLane, Transco's parent company, is one of the nation's largest entities engaged in supply chain services, providing grocery and foodservice supply chain solutions for convenience stores, mass merchants, drug stores and restaurants throughout the United States. Approximately 3,580 Transco drivers would be eligible for the requested exemption. These drivers utilize approximately 1,700 CMVs in Transco's fleet, which consist almost exclusively of tractors equipped with sleeper berths, usually pulling 48- or 53-foot trailers. The grocery division operations are similar to short haul in that they are low mileage exposure and have multiple deliveries.

In most cases Transco relies on team drivers who alternate during shift deliveries. Total trip time averages 17.2 hours. However, total driving time for both drivers combined averages just 9.1 hours. Each driver spends, on average, only 4.55 hours or 32.5% of their shift engaged in driving.

For the following reasons, Transco contends that its operations are characterized by factors that make the driving involved low risk and less susceptible to the type of fatigue associated with long-haul driving:

- Transco's drivers operate largely on local roads at low speeds, which reduces fatigue risk.
- Its operations are characterized by multiple short driving periods interrupted by breaks, which precludes development of time-on-task fatigue and improves driver performance. Its drivers alternate between driving, unloading, and resting without spending significant continuous periods of time driving.
- Its drivers have regular schedules and routes and return home after every trip. Approximately 85% of Transco's drivers work fixed schedules and routes with minimal trip-to-trip variations. Transco's trips begin and end at the same place.
- Transco practices proactive safety management. The company's application highlights several additional proactive safety management practices currently in place in connection with its Grocery Operations. These include DriveCam video monitoring; increased safety inspections and meetings; mandatory driver safety training; and manufacturer-installed collision avoidance systems on the vehicles.

According to Transco, as a result of these operational differences, the 30-minute rest break requirement does not increase safety when applied to its drivers; instead, it claims the requirement may very well decrease road safety for its drivers. For the typical long-haul CMV driver, the 30-minute rest break serves as an opportunity to break the monotony of driving and relieve some of the stress of continuous driving, but Transco's drivers currently have breaks, which include physical exercise, several times each day.

Transco believes that the requested exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the current regulation. In its application, Transco gives the following reasons, among others, why the Agency should approve the exemption request: (1) Allowing Transco drivers to substitute a 30-minute on-duty, non-driving break for a 30-minute off-duty break will not reduce safety; (2) No more than 50% of Transco drivers' logged time per working tour is "on-duty driving" time, and their non-driving on-duty time is primarily devoted to pick-ups, deliveries and like operations; and (3) The company's drivers return to their point of origin at the end of their trip.

A copy of Transco's exemption application is available for review in the docket for this notice.

V. Public Comments

On October 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 52873). The Agency received 10 comments representing individuals and various transportation interests. Most respondents supported the exemption, including the International Food Distributors Association (IFDA), the Convenience Distribution Association (CDA), the National Association of Wholesale Distributors (NAW), and other trade associations and individuals.

IFDA commented that the Agency should also eliminate the 30-minute rest break for all short-haul drivers or allow drivers to use on-duty non-driving time as a part of a new HOS regulation. Per IFDA, for Transco drivers as well as the typical foodservice distribution driver, the 30-minute break requirement provides no added safety benefit and should be withdrawn.

CDA commented that, “Transco has provided ample supporting information for the exemption request, and CDA believes that Transco, as well as other companies, should be granted exemptions when strong supporting materials and criteria are presented that demonstrate that granting the exemption would likely achieve a level of safety equivalent to, or greater than the level that would be achieved by the current regulation (49 CFR 381.305).... ”

NAW said much the same: “... Allowing for greater flexibility on HOS rules, specifically allowing for the required 30-minute rest break to be completed through on duty, non-driving, tasks will improve driver efficiency and be beneficial to Transco, Inc., Transco’s drivers and commuters alike. Further, by granting this exemption FMCSA could produce additional safety benefits in the form of fewer trips and less driving exposure.”

The International Brotherhood of Teamsters (IBT) and two other respondents opposed the requested exemption. IBT commented that “Transco has not sufficiently met the test that granting the exemption requested would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305).”

VI. FMCSA Decision

FMCSA has evaluated Transco’s application and the public comments and decided to grant the exemption. Although the company made arguments that were unjustified – like claiming that its compliance with the 14-hour rule applicable to all CMV drivers in interstate commerce was a reason to grant the exemption – FMCSA

believes that Transco's drivers in its grocery and food service divisions who are engaged in making wholesale deliveries to grocery and convenience stores will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemptions [49 CFR 381.305(a)]. A number of factors reduce the safety risk of Transco operations, compared to those of most motor carriers: 1) On average, each Transco driver drives only about 23.8 miles between each delivery stop and a total of about 180.5 miles total per trip; 2) Transco drivers operate largely on low-speed roads at low speeds; 3) Transco's drivers generally are assigned to specific schedules and routes and return home at the end of every trip; 4) Transco's drivers take frequent breaks from driving to unload trucks; 5) Transco drivers average 15.2 driving legs per trip with each leg averaging just 36 minutes; and 5) Transco's drivers most often operate in teams of two and share driving duties. The granted exemption will allow Transco's drivers in the grocery division to comply with the 30-minute rest break requirement while performing on-duty, not driving tasks.

VII. Terms and Conditions for the Exemption

- Drivers must have a copy of this notice or signed FMCSA exemption document in their possession while operating under the terms of the exemptions. The exemption document must be presented to Federal or State enforcement officials upon request.
- Drivers operating under this exemption must maintain a route manifest document that identifies the route being served and the locations of all delivery points for each daily trip.

- The exemption applies to all Transco drivers in its grocery division who make wholesale deliveries to grocery and convenience stores.
- The exemption is limited to team driver operations with sleeper-berth equipped truck tractors.
- Drivers must return to their point of origin at the end of their trip.
- Drivers cannot drive if more than 8 hours have passed since the end of the driver's last off duty period, sleeper-berth period, or 30 consecutive minute break period.
- Drivers operating under this exemption must use electronic logging devices (ELDs) to document their hours of service.
- The vehicles used by drivers operating under this exemption must be equipped with safety performance monitoring systems which include video monitoring and which capture information such as impacts, hard braking, and other abrupt vehicle motions.
- Drivers operating under the exemption must utilize FMCSA's North American Fatigue Management Training Program.

Notification to FMCSA

Exempt motor carriers must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of its CMVs operating under the terms of the exemption. The notification must include the following information:

- (a) Name of the exemption: "Transco"
- (b) Name of the operating motor carrier,
- (c) Date of the accident,

- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. Interested parties or organizations possessing information that would otherwise show that any or all of these motor carriers are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or

if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

Issued on: August 13, 2019.

Raymond P. Martinez

Administrator

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